

# **EXHIBIT R**

00697

1 CAUSE NO. GV002327  
2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
3 ex rel. )  
4 VEN-A-CARE OF THE )  
5 FLORIDA KEYS, INC., )  
6 Plaintiffs, )  
7 VS. ) TRAVIS COUNTY, TEXAS  
8 DEY, INC.; ROXANE )  
9 LABORATORIES, INC.; WARRICK )  
10 PHARMACEUTICALS CORPORATION; )  
11 SCHERING-PLOUGH CORPORATION; )  
12 SCHERING CORPORATION; )  
13 LIPHA, S.A.; MERCK-LIPHA, S.A.; )  
14 MERCK, KGAA; AND EMD )  
15 PHARMACEUTICALS, INC., )  
16 Defendants. ) 53RD JUDICIAL DISTRICT  
17 \*\*\*\*\*

18 ORAL AND VIDEOTAPED DEPOSITION OF

19 ROBERT FRANCIS MOZAK  
20 VOLUME IV  
21 March 13th, 2003

22 \*\*\*\*\*

23 ORAL AND VIDEOTAPED DEPOSITION OF

24 Robert Francis Mozak, produced as a witness at the  
25 instance of the Relator and duly sworn, was taken in  
the above-styled and numbered cause on the 13th of  
March, 2003, from 9:37 a.m. to 7:22 p.m., before  
Debra L. Sietsma, CSR in and for the State of Texas,  
reported by machine shorthand, at 300 West 15th  
Street, 9th Floor, Austin, Texas, pursuant to the  
Texas Rules of Civil Procedure and the provisions as  
previously set forth.

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1 A. Yes. He was -- he received this memo and --  
2 and I believe he was present at the meeting when we  
3 talked about it.

4 Q. Okay. And -- and after going to Lipha, did  
5 anybody at Lipha ever instruct you or anybody else at  
6 Dey, to your knowledge, that they should not follow  
7 the pricing strategy that is stated in your memo dated  
8 February 24th, 1992?

9 MR. FLECKMAN: Objection, form.

10 THE WITNESS: No. Nobody instructed me.

11 Q. (BY MR. BREEN) Now -- let me see Cromolyn.  
12 Did Dey continue to follow the pricing  
13 strategy that was announced in your memo of  
14 February 24th, 1992 all the way up until the time you  
15 left the company?

16 MR. GAYNOR: Objection, form.

17 THE WITNESS: I believe in establishing  
18 a -- a price for a new generic, we followed  
19 essentially the same guidelines that we were advised  
20 by First DataBank, which was to set the AWP at  
21 approximately, you know, the area of ten percent below  
22 the branded product and the WAC price at somewhere  
23 between 15 and 25 percent below the AWP price. This  
24 was the advice we got from First DataBank.

25 And whenever we were the first generic

1 I, ROBERT FRANCIS MOZAK, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.  
4  
5

ROBERT FRANCIS MOZAK

6  
7  
8 THE STATE OF )  
9 COUNTY OF )

10 Before me, , on this  
11 day personally appeared ROBERT FRANCIS MOZAK,  
12 known to me (or proved to me under oath or through  
13 ) (description of identity  
14 card or other document) to be the person whose name is  
15 subscribed to the foregoing instrument and  
16 acknowledged to me that they executed the same for the  
17 purposes and consideration therein expressed.

18 Given under my hand and seal of office this  
19 day of , 2003.  
20  
21  
22

23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF  
25

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8 LIPHA, S.A.; MERCK-LIPHA, S.A.; )  
MERCK, KGAA; AND )  
9 EMD PHARMACEUTICALS, INC., )  
Defendants. ) 53RD JUDICIAL DISTRICT

10

REPORTER'S CERTIFICATION  
11 DEPOSITION OF ROBERT FRANCIS MOZAK, VOLUME IV  
MARCH 13TH, 2003

12

13 I, Debra L. Sietsma, Certified Shorthand Reporter  
14 in and for the State of Texas, hereby certify:

15 That the witness, ROBERT FRANCIS MOZAK, was duly  
16 sworn by the officer and that the transcript of the  
17 oral deposition is a true record of the testimony  
18 given by the witness;

19 That the deposition transcript was submitted on  
20 March 17th, 2003, to the attorney for Dey, Inc., for  
21 examination, signature and return to me by April 7th,  
22 2003;

23 That the amount of time used by each party at the  
24 deposition is as follows:

25 Mr. Breen - 4 hours, 11 minutes  
Mr. Winter - 1 hour, 36 minutes

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1 Mr. Fleckman - 1 hour, 43 minutes  
2 Mr. Moore - 19 minutes

3 That pursuant to information given to the  
4 deposition officer at the time said testimony was  
5 taken, the following includes counsel for all parties  
6 of record:

7 MR. JOE CRAWFORD,  
8 Attorney for Plaintiff;  
9 MR. JAMES JOSEPH BREEN,  
10 Attorney for the Relator;  
11 MR. STEPHEN M. HUDSPETH,  
12 Attorney for Defendant Dey, Inc.;  
13 MR. R. ERIC HAGENSWOLD,  
14 Attorney for Defendant Roxane  
15 Laboratories, Inc.;  
16 MR. C. MICHAEL MOORE,  
17 Attorney for Defendants Warrick  
18 Pharmaceuticals Corporation,  
19 Schering-Plough Corporation and  
20 Schering Corporation

21 I further certify that I am neither counsel for,  
22 related to, nor employed by any of the parties or  
23 attorneys in the action in which this proceeding was  
24 taken, and further that I am not financially or  
25 otherwise interested in the outcome of the action.

Further certification requirements pursuant to  
Rule 203 of TRCP will be certified to after they have  
occurred.

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Certified to by me this 17th day of March, 2003.

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Debra L. Sietsma, TX CSR 1573

Expiration Date: 12/31/04

Fredericks-Carroll Reporting

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  
2 The original deposition was/was not returned to  
3 the deposition officer on April 7th, 2003;  
4 If returned, the attached Changes and Signature  
5 page contains any changes and the reasons therefor;  
6 If returned, the original deposition was delivered  
7 to Mr. Raymond Winter, Custodial Attorney;  
8 That \$ is the deposition officer's  
9 charges to The State of Texas for preparing the  
10 original deposition transcript and any copies of  
11 exhibits;  
12 That the deposition was delivered in accordance  
13 with Rule 203.3, and that a copy of this certificate  
14 was served on all parties shown herein on and filed  
15 with the Clerk.  
16 Certified to by me this day of March,  
17 2003.

18  
19 Debra L. Sietsma, TX CSR 1573  
20 Expiration Date: 12/31/04  
21 Fredericks-Carroll Reporting  
22 7719 Wood Hollow Drive, Suite 156  
Austin, Texas 78731  
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